P. E. Guerin, Inc. *and* District 15 International Association of Machinists & Aerospace Workers, AFL–CIO. Cases 2–CA–24219, 2–CA–24378, and 2–RC–20856

November 30, 1992

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issue presented in this case is whether the Respondent engaged in objectionable conduct, including several violations of Section 8(a)(1) and (3) during an election's critical period, warranting the setting aside of the election and directing a second election.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, finding,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, and orders that the Respondent, P. E. Guerin, Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election in Case 2–RC–20856 is set aside and the case is remanded to the Regional Director for Region 2 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative, as directed below.

[Direction of Second Election omitted from publication.]

[1] On July 2, 1992, Administrative Law Judge Howard Edelman issued the attached decision which was supplemented by an Errata dated July 21, 1992. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Gregory B. Davis, Esq., for the General Counsel.
Arthur Liberstein, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on June 25 and 26, 1991, in New York, New York. The case was based on a consolidated complaint which issued on August 20, 1990. This complaint was subsequently amended at trial on June 25. Additionally, objections to the conduct of the election in connection with the representation case set forth in the caption above were consolidated with the above unfair labor practice trial. The complaint was based on a charge filed by District 15 International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) against P. E. Guerin (Respondent). The complaint alleges in substance that during an organizational campaign by the Union attempting to organize Respondent's production and maintenance employees, Respondent engaged in various conduct in violation of Section 8(a)(1) of the Act, and discharged Kenny Barber and Philip D'Amato in violation of Section 8(a)(3) of the Act. The objections filed by the Union are essentially consistent with the unfair practices alleged except that they include an allegation of a captive-audience speech within 24 hours of an election within the prohibition of *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953).

On the entire record, including my observation of the demeanor of the witnesses, and on a careful consideration of the briefs, I make the following

FINDINGS OF FACT

Respondent is a New York corporation with its office and place of business located in New York, New York, where it is engaged in the business of the manufacture and nonretail sale of decorative hardware and related products. During the course of Respondent's business, Respondent annually purchases and receives at its place of business goods valued at in excess of $50,000 directly from points outside the State of New York. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Respondent's production and maintenance employees number about 40 employees. Sometime on or about January 1990, D'Amato contacted the Union and indicated that the employees employed by Respondent were interested in union representation. A meeting was scheduled at a nearby bar on February 6 and attended by D'Amato, Barber, Franklin Hartman, and about 15 other employees. At this meeting a union representative spoke to the employees about the benefits of unionization. A second meeting was held at the same bar on February 16, attended by D'Amato, Barber, and 10 or so other employees. During this meeting D'Amato, Barber, and some other employees signed union cards. D'Amato and Barber were the most active union supporters and spoke with and distributed union cards to most of Respondent's employees. These activities took place outside Respondent's plant and during nonworking hours.

Franklin Hartman, a former employee of Respondent, credibly testified that on February 7, the day following the first union meeting, Andrew Ward, Respondent's president, pointed him out to Martin Grubman, sales manager and an admitted supervisor within the meaning of Section 2(11) of the Act, and stated ''There goes the organizer.'' Neither Ward nor Grubman denied this testimony.

On March 1 during the morning D'Amato credibly testified that he and Barber were examining a gun catalogue at

D'Amato's workplace for a few minutes when Ward appeared and accused D'Amato of reading on company time. He then stated ''I'm going to fire your ass, I'll close down the chasing department [D'Amato was a chaser in the chasing departmen]). I am going to issue a formal warning . . . I know what else you are doing.'' Barber, a credible witness corroborated D'Amato's testimony.[1] Ward denied the statements attributed to him, by D'Amato and Barber. I credit Barber and D'Amato's testimony.[2]

On March 3, Ward issued D'Amato a written warning for reading outside material during working hours and for distracting another employee from his work. Respondent did not have any formal disciplinary procedure. There is no evidence that Respondent issued any written warnings. D'Amato was employed by Respondent at the time as a chaser which is a position requiring a fair amount of acquired skill. He began his employment with Respondent in 1984, as a filer and as he acquired skill, was later promoted to a chaser. There is no evidence that D'Amato had ever received any warnings, oral or written, throughout his employment with Respondent.

On March 7, the Union filed the instant representation petition with the Board's Region 29. That same morning, Terry Elders, a foreman and an admitted supervisor within the meaning of Section 2(11) of the Act, came over to Barber and told him that Respondent was terminating his employment. Barber asked Elders why, and Elders replied that he simply ''didn't work out.'' Barber left his work area and proceeded into Ward's office unannounced, to protest his discharge. On entry, he observed Ward with an individual not employed by Respondent passing a gold-plated pistol between each other. Undisputed testimony established that the individual in Ward's office was an electrician named Donovan, who had performed some work in Respondent's building and had worked out an arrangement with Ward to gold plate his pistol for which he had a permit. Barber apparently came in at the time when Ward was returning the finished product to Donovan. After Donovan left Respondent's office, Barber told Ward about his discharge and Ward replied that he had authorized it.

Barber began his employment with Respondent as a filer, without prior experience on September 25, 1989. Generally, unskilled employees are started as filers and learn on the job. When they acquire experience, they are ultimately promoted to a chaser position. Filers' duties consist of filing the edges of rough castings from the foundry. They are thereafter refined by ''chasing'' which is skilled machine work. Respondent has no probationary period for new employees. Employees receive wage increases at the discretion of Respondent based on merit. In addition to his filing duties, Barber preformed some general maintenance and repair work on Respondent's building.

Elders testified that he can usually tell whether a new employee work out within a month. Elders further testified that he told Barber that his work was inadequate almost daily;, right up until his discharge. Barber denied that he was ever issued any verbal or written warnings concerning his work or his attendance. Elders incredibly testified that he and Ward decided to terminate Barber on March 2, but since Barber was absent that day they did not do so, but rather put off his discharge hoping the ''problem would resolve itself,'' or possibly because they disliked reassigning an unfinished job to someone else. This reason is so vague and indefinite that it strikes me as manufactured and unbelievable. Moreover, contrary to Elders' testimony concerning Barber's job performance, he testified that at some point during his brief employment, he had received a merit increase.

On April 3, D'Amato gave a union leaflet to Wilfred Johnson, Respondent's supervisor of the plating department.[3] At the this time, D'Amato told Johnson that he was dumping sulfuric acid used in Respondent's manufacturing process into the sewer and D'Amato considered this to be toxic dumping. Very shortly thereafter Ward came over to D'Amato's work station and said to him that he was crazy, that he didn't know what happened to those chemicals (presumably a reference to D'Amato's conversation with Johnson). ''I don't know why you're working here anyway, I'm going to fire your ass and I will close the chasing department.'' Ward did not deny this conversation. Accordingly, in view of my favorable impression of D'Amato's credibility, and credible testimony concerning a prior threat by Ward to close down the chasing department, I fully credit D'Amato's testimony.[4]

On April 4, Ward conducted a meeting in his office for the purpose of campaigning against the Union. During the course of an antiunion speech, Ward vas delivering to his employees he stated ''We fired a worker for bringing in the Union, but I guess we were wrong.'' In response to Ward's statement, D'Amato stated that it was he that was responsible for bringing the Union in.[5]

On April 26, D'Amato asked Ward for a leave of absence of about 4 weeks because of bronchial problems. Ward initially told D'Amato that he did not give leaves of absence. D'Amato reminded Ward that he had given him a leave of absence in the past as well as leaves of absence to other em-

[1] Both D'Amato and Barber impressed me as credible witnesses. I was impressed by their demeanor. They gave detailed testimony and such testimony was consistent during both cross- and direct examination. In addition, their testimony was at significant times corroborated by other employees.

[2] Ward did not impress me as a credible witness. He was admittedly a volatile person and the statements attributed to him by D'Amato and Barber and by other witnesses, described below are consistent with such personality. Moreover, Ward's prior statement, described above, concerning the ''organizer,'' which was not denied is similar to the statement in issue.

[3] There is no evidence that Johnson was a supervisor within the meaning of Sec. 2(11) of the Act. However, Respondent did not deny D'Amato's description of Johnson as a supervisor. Accordingly, I conclude that at the very least Johnson is an agent of Respondent.

[4] Johnson was not called as a witness during this trial.

[5] This finding of fact is based on the credible testimony of D'Amato, August Calderon, an employee, and Franklin, a former employee. Ward denied making this statement. However, in view of my unfavorable impression concerning his credibility, I discredit his testimony. Martin Grubman, assistant to the president, corroborated Ward's denial. Grubman is an admitted supervisor within the meaning of Sec. 2(11) of the Act. Grubman's testimony as to this meeting was extremely vague. In view of his supervisor position, and his close relationship with Ward, I do not credit Grubman. Respondent elicited testimony from two other employees, Russell Bassarath and Juan Pena, both of whom essentially denied such statement was made. However, they were unable to recall little if anything as to what was said during the course of Ward's speech. The same is true as to Grubman.

ployees. Ward told him he would speak to his attorney and get back to him. Ward did consult his attorney who advised him, that he had given leaves of absence in past years, and in view of this practice he should give D'Amato his requested leave of absence. Later that afternoon Ward told D'Amato that he could take a leave of absence for whatever time required, but to bring a doctor's note indicating such leave was medically necessary. D'Amato denies Ward conditioned such leave on a doctor's note. In this particular connection, I credit Ward. Since the reason for the requested leave was D'Amato's alleged medical condition it is logical to conclude that any employer would require a doctor's note, especially after consultation with his attorney. This is simply a routine accepted business procedure.

On April 30, D'Amato commenced his leave of absence. Ward testified that he believed that D'Amato would have given him his doctor's note by April 30, when he began his leave of absence. When he did not receive it on that date, he contacted his attorney who told him not to call or write any letters to D'Amato. Notwithstanding his attorney's instructions Ward sent D'Amato a letter dated May 4, which stated: ''In view of the fact that you have not presented us with a doctor's note certifying your illness, which you were supposed to produce on April 30, 1990, as agreed, this will confirm that you have voluntarily resigned from employment with the company.'' On receipt of this letter D'Amato immediately called Ward and denied that he had resigned. He accused Ward of firing him. Ward replied: ''Yes, well maybe.'' Ward did not deny this conversation.[6]

On June 18, 1991, a week before the commencement of the instant trial, August Calderon was served with a subpoena to appear at the instant trial. Calderon notified Respondent's bookkeeper about the subpoena. Shortly thereafter, in the morning while working, Ward came over to Calderon's work station. Present were Sal Bargallo and Carlos Lloret. At this point Ward began screaming at the group that: ''I should fire you guys for talking on the job. . . . Tell Phil D'Amato that I won the case. You guys are shit, I should fire you guys. If I give you guys a raise it will be a quarter, if I give you any raise. And you guys don't deserve nothing.''[7]

The election in the instant case was scheduled for April 12 at 10 a.m. On April 11, at about 10:30 a.m. Respondent scheduled a mandatory employee meeting. Present at this meeting were Supervisors Martinez, Elders, and Johnson. Grubman was the speaker on behalf of Respondent. Grubman was in the middle of an antiunion election speech when at some point D'Amato reminded Grubman that this speech was taking place within the Board's prohibited 24-hour rule. Grubman looked at his watch and immediately adjourned the meeting.[8]

Analysis and Conclusion

The evidence established that on February 7, the day following the initial union meeting, Ward stated to Grubman as employee Hartman walked by: ''There goes the organizer.'' It is clear that such statement which was directed to and heard by Hartman would reasonably cause him to believe that the employees' union activities were under surveillance. Under these circumstances, I conclude Respondent violated Section 8(a)(1) of the Act by creating the impression of surveillance. *Waterbed World*, 286 NLRB 425, 427 (1987); *7-Eleven Food Store*, 257 NLRB 108, 116 (1981). I also conclude that such statement establishes Respondent's knowledge of union activities generally, and his suspicion at the time that Hartman was the major union activist. *Waterbed World*, supra.

The evidence also established that on March 1, D'Amato and Barber were talking at D'Amato's workplace when Ward came over and angrily stated to D'Amato: ''I'm going to fire your ass, I'll close down the chasing department. I'm going to issue a formal warning. . . . I know what else you're doing.'' Ward's statement that he knew what else D'Amato was doing taken together with his general knowledge of union activity establish his specific knowledge of D'Amato's union activity. *Waterbed World*, supra; *Lafayette Radio Electronics Corp*., 216 NLRB 1135 (1975). Clearly his statements, made with knowledge of D'Amato's union activities that he was going to issue a written warning, fire him and close down the chasing department constitute individual threats to issue a warning, to discharge, and to close a specific department, in violation of Section 8(a)(1) of the Act. *Penn Color, Inc*., 261 NLRB 395, 396, 405 (1982).

General Counsel contends that Respondent violated Section 8(a)(1) on March 7 by brandishing a pistol in the presence of employees and thus threatening them with physical violence. I find no merit to this contention. The evidence established that the basis for this allegation was that following Barber's discharge, described below, Barber proceeded, unannounced into Ward's office which was closed and observed Ward handing over a gold-plated pistol to an electrical contractor who had performed some electrical work at Respondent's facility. The evidence established that this was a private transaction, unrelated to Respondent's usual work or to union activities. There is no evidence that Ward in any manner, express or implied, threatened Barber, or any other employee with this pistol. Under the circumstances described above, I conclude that General Counsel has not established the 8(a)(1) violation alleged.

The evidence established that on April 3, D'Amato distributed a union leaflet to Supervisor Johnson and at the same time complained about the dumping of sulfuric acid. Johnson, who was at least an agent of Respondent, if not a supervisor within the meaning of the Act, undoubtedly informed

[6] D'Amato did obtain the doctor's note required and forwarded such note to Ward in a letter dated March 22.

[7] The facts set forth above were based on the credible and corroborated testimony of Calderon and Lloret. Ward admitted that he observed the above three employees talking and went ''nuts.'' Ward admitted using profane language and admitted stating ''See what I give you at Christmas time with your bonus.'' Ward's limited admission reaffirms my evaluation of Calderon and Lloret as credible witnesses and my overall general impression as to Ward's lack of credibility. It also reinforces Ward's inclination to retaliate against employees who he suspects of being sympathetic to the Union.

[8] The above facts are based on the credible and corroborative testimony of D'Amato and Hartman. I find Grubman's credibility suspect as set forth in fn. 5. Moreover, D'Amato's testimony that when he reminded Grubman that his speech was taking place within the prohibited 24 hours prior to an election and that he looked at his watch and immediately adjourned the meeting has a ring of truth.

Ward of his conversation concerning the sulfuric acid and gave Ward the union leaflet because minutes later Ward angrily confronted D'Amato and told him he was uninformed about how the sulfuric acid was handled and then stated: ''I'm going to fire your ass and I will close the chasing department.'' As set forth above, Ward was aware of D'Amato's union activities. Moreover, such statements were virtually a repetition of the threats found to be unlawful on March 1. Accordingly, I conclude Respondent additionally violated Section 8(a)(1) of the Act by threatening to discharge employees and to close a specific department in its facility.

The evidence established that during an antiunion speech to Respondent's employees on April 4, Ward stated ''We fired a worker for bringing in the Union.'' Such statement indelibly creates the impression in employees' minds that if they engage in union activities they will be discharged. Accordingly, I conclude that by making such statement Respondent again threatened to discharge employees in violation of Section 8(a)(1) of the Act. *Penn Color*, supra.

The evidence established that on June 18, 1991, a week before the trial, counsel for General Counsel issued a subpoena to employee Calderon. When Ward became aware of this, he rushed over to Calderon's work station and in the presence of employees Bargallo and Lloret threatened to fire them and refuse to grant them a wage increase. At the time he made such threats he stated: ''Tell Phil D'Amato that I won the case.'' This is undoubtedly a reference to the instant trial. In view of the timing of the threats, immediately following the issuance of a Board subpoena to Calderon's and Ward's reference to the instant trial, I conclude such threats were motivated by Calderon's participation in the Board's proceedings. I find such threats violative of Section 8(a)(1) of the Act. *S. E. Nichols*, 284 NLRB 556, 558 (1987).

On March 3, Respondent issued a warning letter to D'Amato for reading outside material during working hours. This letter followed Ward's unlawful threat to issue such letter on March 1, as set forth above. Respondent does not have an established disciplinary procedure. Moreover, there is no evidence that D'Amato, a longtime employee, had ever received any warnings, oral or written, during his entire employ. There is no evidence that Respondent would have issued such warning in the absence of union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The issuance of disciplinary warnings because of union activity is unlawful. *Kenco Plastics Co.*, 260 NLRB 286, 290 (1981). Accordingly, I conclude that the issuance of such warning violated Section 8(a)(1) and (3) of the Act.

The evidence established that Respondent discharged Barber on March 7. Respondent contends that Barber was discharged because he couldn't perform the work. However, Elders, Respondent's supervisor, testified that he could tell if an employee was going to work out within a month. Barber was employed for a period of 4 months during which period he received no warnings concerning his work performance. Moreover, and most significantly, Respondent admitted that Barber was discharged because of his union activities in his antiunion speech to his employees on April 4, when he stated: ''We fired a worker for bringing in the Union.'' Barber was the only worker fired since the advent of the union campaign. However, even if I were to credit Respondent's contention that Barber was a poor worker and that he was warned practically every day by Elders concerning his poor work, in view of Elders' testimony that he could tell whether a new employee would work out within a month, it would appear that Respondent condoned Barber's poor work until he engaged in union activities. Accordingly, I conclude that there is no evidence that Respondent could have terminated Barber in the absence of union activities, *Wright Line*, supra. I further conclude that Respondent unlawfully discharged Barber in violation of Section 8(a)(1) and (3) of the Act.

The evidence supporting the allegation that D'Amato was unlawfully discharged is overwhelming. It is crystal clear that Respondent not only had knowledge of union activities generally, but he was also aware that D'Amato was the principle activist. This is established by the events in Respondent's April 4 meeting of employees during which time Ward admitted that he had fired Barber because he thought he had brought in the Union but later learned that he had fired the wrong man. At this time D'Amato stated that he was the employee responsible for bringing in the Union. The events of this meeting not only establish knowledge, but also an admission that Respondent had fired the employee he had thought to be the principal union activist. Thus, the evidence establishes that Respondent intended to terminate whoever the principal union activist might be, and at this meeting he learned that it was D'Amato. Other evidence of a discriminatory motive is the discriminatory warning letter issued to D'Amato on March 3. Further evidence of a discriminatory motive is established by the initial disparate treatment accorded to D'Amato when he requested a leave of absence for reasons of ill health. Ward initially told D'Amato that he did not give leaves of absence. D'Amato reminded Ward that he had given him a leave of absence to him in the past as well as leaves of absence to other employees. It was only after Ward consulted his attorney who advised him that in view of his past liberal practice in granting leaves of absence and in view of the present union activities he should not deviate from his past practice. Thus, Ward reluctantly granted D'Amato a leave of absence, conditioned on receipt of a doctor's note. Although D'Amato began his leave of absence without supplying the doctor's note, Ward, rather than contacting D'Amato to request the note waited only 4 days, and then contrary to instructions from his attorney, sent D'Amato a letter dated March 4, advising him that since he hadn't produced the doctor's note was deemed to have voluntarily quit. This hasty action, without giving D'Amato a reasonable period of time to produce such doctor's note or to explain why he had not produced it on April 30 establishes his intention to terminate D'Amato without reasonable provocation. His attempt to disguise such termination as a voluntary quit is simply further evidence of a discriminatory motive. Moreover, when D'Amato contacted Ward following his receipt of his March 4 letter, denied that he had quit and accused Ward of firing him, Ward admitted it. Respondent simply contends that D'Amato was terminated because he failed to supply a doctor's note on the day the leave of absence was to begin. In view of the overwhelming evidence establishing a discriminatory motive, and Respondent's utter lack of any evidence to establish such discharge would have taken place in the absence of union activity, I conclude that Respondent discharged D'Amato on March 4, in violation of Section 8(a)(1) and (3) of the Act. *Wright Line*, supra.

Objections

The Union filed timely objections to the election held on April 12 at 10 a.m. The objections filed were consistent with the unfair labor practices alleged in the complaint through April 12 except for the objection filed that the Employer held a captive audience speech among its employees within 24 hours of the time of the election in violation of the long established rule against such speeches. *Peerless Plywood Co*., 107 NLRB 427 (1953). The credible evidence establishes such violative speech took place. Additionally, as set forth above, I have concluded that certain conduct engaged in by Respondent from March 7, the date the Union's petition in the instant case was filed to April 12, the date of the election, was violative of Section 8(a)(1) of the Act. Such conduct would also constitute objectionable conduct, affecting the results of the election. *Dal-Tex Optical Co*., 137 NLRB 1782 (1962); *Caron International*, 246 NLRB 1120 (1979). On the basis of all the objectionable conduct engaged in by Respondent, I conclude such conduct justifies setting aside the results of the election, and conducting a second election.

CONCLUSIONS OF LAW

1. Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By creating the impression among its employees their union activities were under surveillance, Respondent violated Section 8(a)(1).

4. By threatening its employees that it would issue to them written warnings because of their activities on behalf of the Union, Respondent violated Section 8(a)(1).

5. By threatening its employees with discharge because of their union activities, Respondent violated Section 8(a)(1).

6. By threatening its employees that it would close down departments within its facility because of their union activities, Respondent violated Section 8(a)(1).

7. By threatening to discharge its employees because they participate in NLRB proceedings, Respondent violated Section 8(a)(1).

8. By threatening to withhold raises from its employees because they participate in NLRB proceedings, Respondent violated Section 8(a)(1).

9. By issuing a written warning to its employee Philip D'Amato because of his activities on behalf of the Union, Respondent violated Section 8(a)(1) and (3).

10. By discharging its employees Philip D'Amato and Kenny Barber because of their union activities, Respondent violated Section 8(a)(1) and (3).

REMEDY

Since I have found that Respondent discriminatorily discharged its employees Barber and D'Amato, I shall recommend Respondent make whole the employees together with interest as set forth below, from the date of their termination until their reinstatement or valid offer of reinstatement.

Backpay for the above employees shall be computed in accordance with the formula approved in *F. W. Woolworth Co*., 90 NLRB 289 (1950). Interest on and after January 9, 1990, shall be computed at the ''short-term'' Federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621 in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed as set forth in *Florida Steel Corp*., 231 NLRB 651 (1977).

I shall also recommend that Respondent expunge from its records any reference to the discharges of the above-named employees, and to provide written notice of such expunction to those employees, and to inform them that Respondent's unlawful conduct will not be used as a basis for further personnel action concerning them. *Sterling Sugars, Inc*., 261 NLRB 472 (1982).

I shall further recommend that the above election be set aside and a second election be conducted.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, P. E. Guerin, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Activities on behalf of District 15, International Association of Machinists & Aerospace borkers, AFL–CIO, the Union.

(b) Creating the impression among its employees that they were under surveillance.

(c) Threatening its employees that it would issue to them written warnings because of their activities on behalf of the Union.

(d) Threatening its employees with discharge because of their union activities.

(e) By threatening its employees that it would close down departments within its facility because of their union activities.

(f) Threatening to discharge its employees because they participate in NLRB proceedings.

(g) Threatening to withhold raises from its employees because they participate in NLRB proceedings.

(h) Issuing written warnings to its employees because of their activities on behalf of the Union.

(i) Discharging its employees because of their union activities.

(j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from and or all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Kenny Barber and Philip D'Amato, full and immediate reinstatement to their former or substantially equivalent positions of employment, without prejudice to

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

their seniority or other rights and privileges previously enjoyed.

(b) Make the above employee whole for any loss of earnings they may have suffered by reason of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agent, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all the records necessary or useful to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in New York, New York, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT create the impression amongst our employees that their union activities are under surveillance.

WE WILL NOT threaten our employees that we will issue a written warning to them because of their activities on behalf of the Union.

WE WILL NOT threaten our employees with discharge because of their union activities.

WE WILL NOT threaten to close down departments within our facility because of their union activities.

WE WILL NOT threaten to discharge employees because of their participation in NLRB proceedings.

WE WILL NOT threaten to withhold raises from employees because they participate in NLRB proceedings.

WE WILL offer Kenny Barber and Philip D'Amato, full and immediate reinstatement to their former or substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make them whole for any loss of earnings they may have suffered by reason of the discrimination against them.

P. E. GUERIN, INC.